Supreme Court, U.S.
FILED
JUL 24 1992
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No. 91-2076

In The

Supreme Court of the United States

October Term, 1992

SHIRLEY CLARK,

Petitioner,

v.

HAAS GROUP, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Did the court below correctly rule that where an employee was fired after two years of employment, filed a charge with the EEOC eighteen days after she was fired complaining of unlawful discrimination on the grounds of age and sex, sued her employer in federal district court approximately six months after she was fired seeking to recover amounts allegedly owed to her under the Fair Labor Standards Act ("FLSA"), had her federal district court case dismissed with prejudice in its entirety pursuant to an Order that had no reservations, qualifications or conditions whatsoever, and then, three months later filed a second suit in the same federal district court also seeking relief under the FLSA and alleging a claim for age discrimination, principles of res judicata barred the employee's subsequent action against the employer?

RULE 28.1 LISTING

Respondent Haas Group, Inc. has no parent companies, subsidiaries, or affiliates to list pursuant to Rule 28.1.

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The Respondent Haas Group, Inc. ("HGI") respectfully requests that this Court deny the petition for writ of certiorari seeking review of the Tenth Circuit's opinion in this case. That opinion is reported at 953 F.2d 1235 (1991).

STATEMENT OF THE CASE

Respondent refers this Court to the Tenth Circuit's opinion reproduced at Pages 1a through 9a of the Petition for an accurate statement of the facts and procedural history of the case. One important factual point that is not mentioned in the Tenth Circuit's opinion and that the Petitioner attempts to bury in a footnote, is that the settlement agreement pursuant to which Petitioner's first lawsuit was dismissed with prejudice, and upon which the petition is in large part based, is *not* a part of the record below. Neither the settlement agreement nor any correspondence evidencing the negotiations leading to the settlement agreement was introduced into the record below. Only after the Tenth Circuit rendered its decision did Petitioner seek to supplement the record by filing a motion to supplement the record and a newly-created affidavit purporting to support Petitioner's contention that when she executed the settlement agreement she intended to preserve certain claims, despite the fact that there is no express reservation of claims in the agreement or in the order dismissing her first suit with prejudice. The Tenth Circuit, following well-established precedent, denied Petitioner's motion to supplement the record in an order dated February 27, 1992. (Pet. at 10a). Thus, Petitioner's statement at page 5 of her Petition that "the court ignored the limiting language of the settlement

agreement," fails to note that the Tenth Circuit had no choice but to "ignore" the settlement agreement because the settlement agreement was not part of the record before it. For this reason alone, the Petition for Certiorari should be denied, because the foundation of Petitioner's argument was never part of the record below, due to Petitioner's own decision not to introduce it into evidence.

ADDITIONAL REASONS WHY THE PETITION SHOULD BE DENIED

Even if the record below were as Petitioner wishes it were, there would still be no compelling reasons to justify the granting of a writ of certiorari. As will be discussed below, neither the decision below nor the record presents the questions raised by Petitioner; the decision below is neither in conflict with the decisions of the United States Supreme Court nor the various circuit courts of appeal nor is it in conflict with the decisions cited by Petitioner in support of her reasons for granting the writ of certiorari. The Court of Appeals fully considered and correctly decided the issues before it.

1. Neither the Decision of the Court of Appeals Nor the Record Raises the Questions Presented in the Petition.

The first "Question Presented" in the Petition is whether the "principles of res judicata require that, in every case involving an employment relationship, each party must assert every claim that is available against the

other party, or be forever barred from asserting it." The Tenth Circuit, however, did not decide that question in this case. Moreover, the facts of record will not justify a determination of that question by this Court.

(a) The record does not permit the formulation or resolution of the first "Question Presented" by the Petitioner. The Tenth Circuit did not reach the question of whether, in every case involving an employment relationship, each party must assert every available claim against the other party or be forever barred from asserting it. The Tenth Circuit was faced with a narrow set of facts:

1. Petitioner was hired by HGI in January of 1984 and worked for HGI until October 31, 1986, when she was fired. (Pet. at 2a).

2. Eighteen days after she was fired, Petitioner filed a charge with the EEOC complaining of unlawful discrimination by HGI on the grounds of age and sex.

3. Approximately seven months after she was fired, and six months after she filed her employment discrimination claims with the EEOC against HGI, Petitioner sued HGI on May 18, 1987, in the United States District Court for the District of Colorado seeking to recover amounts allegedly owed to her under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.* (Pet. at 2a). This case is referred to as *"Clark I."*

4. Approximately nine months later, on July 27, 1988, an Order was entered by the District Court dismissing *Clark I* with prejudice, in its entirety, with no reservations, qualifications, or conditions whatsoever. The Order

dismissing *Clark I* is set forth at page 1a of the Appendix to this brief ("App. 1a").

5. Approximately three months later, on October 31, 1988, Petitioner filed a second suit in the District Court, also seeking relief under the FLSA and alleging a claim for age discrimination. (Pet. at 2a-3a). This case is referred to as *"Clark II."*

6. Based upon these facts, the District Court denied HGI's Motion for Summary Judgment based upon the doctrine of *res judicata* (and subsequent Motion for Directed Verdict and Motion for J.N.O.V.) in *Clark II*, and HGI appealed to the Tenth Circuit. (Pet. at 11a-13a).

The foregoing constitute the facts in the record before the Tenth Circuit and are the facts upon which the Tenth Circuit was required to base, and did base, its decision in this case.

(b) Based on the particular narrow facts before it, the Tenth Circuit merely held that *Clark I* and *Clark II* were "related in time, space, origin, or motivation," and that the claims asserted in *Clark I* and *Clark II* "formed a convenient trial unit" because the claims in the two suits "were predicated exclusively on Clark's employment relationship with HGI."

The Court below issued a very narrow holding applicable only to the facts of this case. The Tenth Circuit did not reach the question of whether, in every case involving an employment relationship, each party must assert every available claim against the other party or be forever barred from asserting it. The Court ruled only as to this particular case, in which:

(i) Petitioner's employment had terminated prior to the filing of *Clark I* (Pet. at 2a);

(ii) all causes of action had accrued prior to the filing of *Clark I*;[1]

(iii) Petitioner was consciously aware of the alleged facts upon which her discrimination claim was based prior to the filing of *Clark I*;

(iv) Petitioner had received a right to sue letter from the EEOC prior to the resolution of *Clark I* (Pet. at 12a);

(v) *Clark I* sought relief under the FLSA arising out of the employment relationship;

(vi) *Clark I* was dismissed with prejudice in its *entirety* by Order of the Court, with Petitioner's consent and participation, with no reservation of any claims and no other qualifications whatsoever; and

(vii) the relief sought in *Clark II* under the ADEA is, as a matter of law, deemed to be unpaid compensation due pursuant to the FLSA.

The Court held that under these facts, the claims in *Clark II* arose out of the same transaction or series of transactions as the claims in *Clark I*, and the doctrine of *res judicata* therefore applied. Furthermore, the Court went beyond the "same transaction" analysis and considered the individual factors set forth in Section 24(2) of the

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[1] All of Petitioner's claims in *Clark I* and *Clark II* arose out of her employment relationship with HGI which relationship terminated prior to the filing of *Clark I*.

Restatement (Second) of Judgments (1982) (the "Restatement") and reached the same conclusion. Petitioner's first "Question Presented" to this Court, whether "principles of res judicata require that, in every case involving an employment relationship, each party must assert every claim that is available against the other party, or be forever barred from asserting it," simply cannot be extracted from the Court of Appeals' opinion. The Court of Appeals' opinion is fact-bound and is limited to the particular unique factual setting of this case.

(c) The second "Question Presented" in the petition is whether the Tenth Circuit erred by failing to consider "proffered evidence of the parties' intent to limit the scope of the settlement" pursuant to which *Clark I* was dismissed with prejudice. Petitioner's second question put to this Court misses the mark. The question before the Tenth Circuit was not whether the proffer of "evidence" to the Court of Appeals after it had rendered its decision should have been considered by the Court of Appeals. The answer to that question is obviously "no." The question before the Tenth Circuit was whether Petitioner, in the district court, met her evidentiary burden of establishing a genuine issue to be tried. *See* Federal Rule of Civil Procedure 56. In the district court, in opposition to HGI's motion for summary judgment, Petitioner was required to bring forth all of her evidence in opposition to HGI's motion. *See, e.g., British Airways Bd. v. Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978), *cert. denied* 440 U.S. 981 (1979) (a party may not rely on legal memoranda in opposition to motion for summary judgment). Petitioner simply failed to make an adequate record in opposition to HGI's motion for summary judgment before the district

court.[2] As explained above, neither the factual nor legal predicate to Petitioner's second "Question Presented" exists in the Tenth Circuit's opinion. The "proffered" evidence, consisting of Petitioner's hearsay-filled Affidavit to which numerous unauthenticated documents were attached, was not filed with the Tenth Circuit until *after* it had rendered its decision in the case. Thus, the "proffered" evidence was not before the Court when it rendered the opinion Petitioner asks this Court to review. The factual predicate for the proposition underlying the second "Question Presented" is therefore non-existent because the Tenth Circuit could not ignore what had not even been presented to it (or to the District Court) when it issued its ruling.

Furthermore, Petitioner cites no authority in support of the proposition that the Tenth Circuit erred by denying her motion to supplement the record after it issued its opinion. In fact, procedural rules and case law make clear that appellate courts cannot receive or consider evidence that was not before the court below. *See, e.g.*, F.R.A.P.

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[2] It is important to realize the impact of what petitioner is suggesting. She suggests that certain evidence should have been introduced in the District Court in opposition to HGI's Motion for Summary Judgment, but petitioner simply failed to introduce the evidence in the District Court. Once the Court of Appeals decided that HGI's Motion for Summary Judgment should have been granted, petitioner argued (and now argues): "Let me go back to the District Court and start over and introduce the evidence I should have introduced, and then we can go back to the Tenth Circuit, and I'll have a better argument." Obviously, such a procedure would destroy the finality of any decision in our adversary system. Ironically, finality is what the doctrine of *res judicata* seeks to preserve.

10(a); Tenth Circuit Rule 10.2; *U.S. v. Elias*, 921 F.2d 870 (9th Cir. 1990) (papers not filed with district court or admitted into evidence are not part of the record or appeal); *Coplin v. U.S.*, 761 F.2d 688 (Fed. Cir. 1985), *aff'd sub nom. O'Connor v. U.S.*, 479 U.S. 27 (appellate courts cannot receive or consider evidence that was not before the court below).

2. There is No Conflict in the Courts of Appeal.

Each of the cases cited by Petitioner in support of her argument that the decision below is "squarely contrary to the holdings of the other circuits that permit employees to raise claims arising out of different aspects of the same employment relationship in successive actions" (Pet. at 7) is distinguishable on its facts from the case before this Court.

In *Wu v. Thomas*, 863 F.2d 1543 (11th Cir. 1989), Kathleen Wu, a tenured professor at the University of Alabama, brought suit against several university officials seeking relief under the Equal Pay Act ("*Wu I*"). The district court tried *Wu I* from March 31 to April 9, 1986. In August 1986, *after* the trial of *Wu I*, Kathleen Wu's husband, also a tenured professor at the University of Alabama, was invited to seek another job. Kathleen Wu and her husband then filed suit together against the University of Alabama ("*Wu II*") alleging that university officials had violated 42 U.S.C. § 2000e (1982) by retaliating against the Wus for bringing *Wu I*.

These facts are obviously distinguishable from the facts in the instant case. First, the claims brought in *Wu II*

did not arise until after the trial of *Wu I* and could not possibly have been brought in *Wu I*. Second, the Wus have not been terminated; their relationship with their employer continues. Third, the parties in *Wu I* and *Wu II* were different. In *Wu I* only Kathleen Wu brought suit. In *Wu II*, Kathleen Wu and her husband were plaintiffs. On these facts, very different from the facts in this case, the Eleventh Circuit found that *Wu II* was not barred by *Wu I*.

May v. Morganelli-Haumann & Assoc., 618 F.2d 1363 (9th Cir. 1980), does not even address res judicata. Petitioner flatly misstates the holding in that case. In *May*, an architect sued a developer in state court for breach of contract for failure to make the payments required by a design contract. Shortly before he agreed to settle that lawsuit, the architect discovered that some of his drawings existed in the files of the architectural firm hired to replace him on the project. *Id.* at 1365. He then brought suit in federal court against the second architectural firm and others. The district court granted the defendants' motion for summary judgment in the second suit on the ground that the developer had discharged all of his contractual obligations to the architect in the state court suit and that the developer therefore owned the copyright to the drawings under the "work for hire" doctrine. The Ninth Circuit reversed on the ground that the design contract was divisible (like an installment contract) and that the architect had elected to treat the developer's alleged breach as partially preserving his rights with respect to any use of the drawings by the developer contrary to the terms of the contract. *May*, 618 F.2d at 1367.

May is not even close factually to the instant case. In *May*, unlike this case, the defendants in the two actions brought by the architect were completely different whereas here Petitioner sued only HGI in *Clark I* and *Clark II*. In *May*, unlike this case, the architect brought his cases in different courts. In *May*, unlike this case, the Court did not discuss res judicata.

Like *Wu* and *May*, *Brantley v. Surles*, 718 F.2d 1354 (5th Cir. 1983), the third appellate decision relied on by Petitioner in an effort to persuade this Court that a circuit split exists, is also factually distinguishable from this case. In *Brantley*, a cafeteria worker in a public elementary school in Mississippi was fired after she placed her son in a private segregated school. The cafeteria worker sued the school board in state court, but the state court dismissed her suit for lack of jurisdiction and the Mississippi Supreme Court affirmed. The worker then sued in federal district court under 42 U.S.C. § 1983. The federal district court granted defendant's motion for summary judgment on res judicata grounds and the Fifth Circuit reversed on the ground that the federal district court had misconstrued the preclusive effect of the Mississippi Supreme Court's decision affirming dismissal of the state court suit. As Judge Garwood noted in his concurring opinion in *Brantley*:

> . . . [T]he Mississippi court decisions were primarily based on jurisdictional grounds, namely, that in each case the chancery court had no original jurisdiction. In such circumstances, Mississippi apparently does not give preclusive effect to alternative determinations on the merits.

Brantley, 718 F.2d at 1360. Thus, like *Wu* and *May*, *Brantley* is distinguishable from the instant case. Unlike the instant case, *Brantley* did not even involve the preclusive effect of a decision on the merits.

In sum, the Tenth Circuit's decision does not conflict with the decisions in other circuits cited by Petitioner.

Petitioner's other arguments regarding a conflict of decisions are based upon an incorrect and overly-broad reading of the Tenth Circuit's decision. Petitioner's arguments are based on the false premise that the Tenth Circuit held that, in every case involving an employment relationship, each party must assert every claim that is available against the other party or be barred from asserting it. In its decision below, the Tenth Circuit makes no such sweeping generalization and limits its holding to the facts of this case. *See* Pet. at 8a-9a. The Tenth Circuit's decision is fact-bound and merely involves an application of the principles of res judicata to a situation in which an employee who was terminated from her employment was aware upon termination of all facts giving rise to her claims based on the employment relationship, which claims as a matter of law, all sought relief under the FLSA, elected to pursue her claims piecemeal rather than bring all of her claims in one action. On these particular facts, the Tenth Circuit held that Petitioner was precluded from "relitigating issues that were or could have been raised in the prior action." (Pet. at 9a).

Petitioner is, therefore, incorrect that the Tenth Circuit's decision conflicts with decisions of other circuits interpreting Federal Rule of Civil Procedure 13 (compulsory counterclaims). The Tenth Circuit simply did not

hold that all employment-related claims must necessarily be brought together at one time. The Tenth Circuit held that, where Petitioner had been terminated, was aware upon termination of all facts giving rise to all claims under the FLSA stemming from the employment relationship, filed suit alleging some but not all of her claims, had her suit dismissed with prejudice and without a reservation of claims, and then attempted to file a second suit against her employer for events allegedly occurring during the employment relationship, principles of res judicata barred such piecemeal litigation.

Likewise, Petitioner is incorrect that the Tenth Circuit's opinion conflicts with other Circuit's decisions interpreting 28 U.S.C. § 1441(c). Because the Tenth Circuit did not hold that, in every lawsuit between an employee and employer each party must raise all claims against the other or lose them, Petitioner's analogy to decisions interpreting the scope of pendent jurisdiction is inappropriate.

Petitioner is also incorrect in contending that the Tenth Circuit's decision conflicts with the holdings of other courts involving consideration of the parties' intent under settlement agreements. In this case, there was no evidence properly before the District Court or the Tenth Circuit regarding the parties' intent with respect to the settlement agreement that led to the dismissal of *Clark I*.

Petitioner is incorrect in contending that the Tenth Circuit's decision conflicts with decisions of other circuits regarding release of ADEA claims. First, Petitioner provided no evidence to the district court of her intent regarding the settlement agreement. Second, Petitioner could have "carved out" her ADEA claim when *Clark I*

was dismissed, but she did not. Rather, she opted to attempt to "blow one by" HGI by executing a settlement agreement and agreeing to a dismissal with prejudice and without reservation that appeared to bar further claims arising out of the employment relationship, only to spring a second lawsuit on HGI after it had settled *Clark I*.

Furthermore, although Petitioner's policy arguments are interesting, they are unfounded based upon the fact-bound decision of the Tenth Circuit. The Tenth Circuit's decision simply does not require employers and employees, as Petitioner exaggeratedly suggests, "to level all of their guns at one another" and "keep blasting away to a final conclusion on every conceivable claim." (Pet. at 17). Rather, the Tenth Circuit's decision instructs terminated employees who sue their employers not to "sandbag" by filing suit on some but not all of their claims arising from the employment relationship, settling those claims and dismissing, without reservation of any claims, the lawsuit in which only some of the claims were brought, and then filing *another* lawsuit against the employer based on the same employment relationship at issue in the first case.

3. The Court of Appeals Fully Considered and Correctly Decided the Issues.

"The doctrine of res judicata prohibits a party from asserting in a second lawsuit any matter that might have been asserted" in a prior lawsuit . . . ," and any matter that "might have been asserted" in the first lawsuit is barred "even if it was not actually asserted" in the first

lawsuit. *Prospero Assocs. v. Burroughs Corp.*, 714 F.2d 1022 (10th Cir. 1983). In *Petromanagement Corp. v. Acme-Thomas Joint Venture*, 835 F.2d 1329 (10th Cir. 1988), the Tenth Circuit expressly adopted the approach of the Restatement (Second) of Judgments ("the Restatement") in explaining how to determine whether claims asserted in a second lawsuit "might have been asserted" in a prior lawsuit. *Id.* at 1335.

In Section 24(1), the Restatement makes it clear that a party may have numerous claims, rights, and remedies arising out of a given "transaction" with another party or arising out of a "series of connected transactions" with another party. The Restatement also explains that the doctrine of res judicata bars any claims arising out of any given "transaction" with another party if a claim asserted in a prior lawsuit arose out of the same "transaction" between the same parties. The Restatement further explains that this preclusion of claims also bars any claim arising out of any "series of connected transactions" with any party if a claim asserted in a prior lawsuit arose out of the same "series of connected transactions" between the same parties. *Id.* at 1335.

In Section 24(2), the Restatement explains how to determine what grouping of facts constitutes a "transaction" and what grouping of transactions constitutes a "series of connected transactions." In making this determination, the trial court should consider the following:

> (i) whether the facts are related in time, space, origin *or* motivation;
>
> (ii) whether the facts form a convenient trial unit; and

> (iii) whether treatment of the facts as a unit conforms to the parties' expectations or business understanding or usage.

Id.

The Tenth Circuit in *Petromanagement*, however, suggested that, in some circumstances, the above-listed factors need not be considered in determining whether claims arise out of the same "transaction." The Court explained that all claims that arise out of a given legal relationship, such as a contractual relationship, arise out of the same "transaction." Thus, any and all currently-existing claims for various breaches of various provisions of a given contract arise out of the same "transaction." As stated by the *Petromanagement* Court "even when there is not a substantial overlap [of the witnesses or proofs in the two actions], the second action may be precluded if it stems from the same transaction or series." *Id., quoting* Restatement (Second) of Judgments § 24, comment b, at 199.

The claims asserted by Petitioner in *Clark I* arose out of the employment relationship between HGI and Petitioner. The claims asserted by Petitioner in *Clark II* also obviously arose out of the employment relationship between HGI and Petitioner. After the dismissal of *Clark I* with prejudice by Order of the trial court, Petitioner once again contended in her Complaint in *Clark II* that HGI failed to follow its own rules and policies and treated her unfairly.

Pursuant to the explanation in the Restatement, as expressly adopted by the Tenth Circuit, the employment relationship between Petitioner and HGI was a single

"transaction." There is no meaningful distinction in this context between a contractual relationship between two parties and the employment relationship between Petitioner and HGI. The claims asserted in *Clark I* arose out of this employment relationship or "transaction," and the claims in *Clark II* also arose out of this employment relationship or "transaction," and the claims asserted in *Clark II* "might have been asserted in the previous cause of action." *Prospero Assocs. v. Burroughs Corp.*, 714 F.2d 1022 (10th Cir. 1983). Therefore, no further analysis was necessary to determine that the claims asserted in *Clark II* were barred by Petitioner's failure to assert them in *Clark I*, because "even when there is not a substantial overlap [of the witnesses or proofs in the two actions], the second action may be precluded if it stems from the same transaction or series." *Petromanagement* at 1336.

Even though, under *Petromanagement*, the Court of Appeals did not have to do so, it considered the factors set forth in Section 24(2) of the Restatement, and reached the conclusion that the claims in *Clark II* arose out of the same transaction as did the claims in *Clark I*.

The first factor that the Restatement suggests the Court should consider is whether the claims asserted in *Clark I* are related to the claims asserted in *Clark II* in time, space, origin, *or* motivation. The facts are clearly related in terms of space in that the claims in both *Clark I* and *Clark II* arose out of events at Petitioner's place of employment. Furthermore, the claims for lost overtime are clearly related in time to the claims asserted in *Clark I*; all claims in both *Clark I* and *Clark II* arose out of the events during Petitioner's employment with HGI.

Second, the Restatement suggests that the Court consider whether the claims in *Clark II* and in *Clark I* form a convenient trial unit. Clearly, since *all* claims arose out of the employment relationship between HGI and Petitioner, which relationship had ended before the filing of either *Clark I* or *Clark II*, *all* claims formed a convenient trial unit and would normally be tried in one action. Furthermore, the very nature of the claims indicates that there would likely have been a "substantial overlap [of the witnesses or proofs in the two actions]" had the claims in both *Clark I* and *Clark II* been tried together. *Petromanagement* at 1336. The doctrine of res judicata cannot be dependent upon identical proof and witnesses or the doctrine would never apply to claims "that might have been asserted in the previous cause of action, even if [they were] not actually asserted." *Prospero* at 1025. To require the causes of action to be identical, as did the trial court in its order denying HGI's Res Judicata Motions, is to eliminate the essence of the doctrine of res judicata as stated in *Prospero*.

Finally, the Restatement suggests that the Court should consider whether the parties would have reasonably expected the claims in *Clark II* to have been tried in the same action as the claims in *Clark I*. Once again, it is obvious that an employer served with a Complaint by a former employee nearly one year after the employee has been terminated, and eleven months after the employee had filed her EEOC grievance, would include any discrimination claims.

Petitioner asserted in *Clark I* some, but not all, of her claims arising out of her employment relationship with HGI. In return for payment from HGI, Petitioner agreed

to dismiss, and did dismiss, *Clark I* with prejudice and *without qualification*. That dismissal barred the later assertion of any claims arising out of the employment relationship between Petitioner and HGI "that might have been asserted in the previous cause of action, even if [they were] not actually asserted." *Prospero* at 1025.

In its opinion below, the Tenth Circuit carefully weighed the facts and considered the case law and correctly decided that the dismissal with prejudice of *Clark I* precluded claims raised in *Clark II*. The Tenth Circuit did not, as Petitioner suggests, extend its holding in *May v. Parker-Abbott Transfer and Storage*, 899 F.2d 1007 (10th Cir. 1990), and did not hold as Petitioner states (Pet. at 5): "that all claims – whether or not they are based on an employment contract – that arise out of the same employment relationship, necessarily arise out of a single transaction, and thus must be raised in a single action, or are barred."

CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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July 24, 1992

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No: 87 F 722

SHIRLEY J. CLARK,

Plaintiff,

v.

HAAS PUBLISHING COMPANY,
a Georgia corporation,

Defendant.

ORDER OF DISMISSAL

(Filed July 27, 1988)

THIS MATTER is before the Court on the parties' Stipulated Motion to Dismiss, filed July 26, 1988 to dismiss the above-captioned action with prejudice, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that the above-captioned matter is DISMISSED with prejudice, each party to bear their own costs.

DATED this 27 day of July 1988, at Denver, Colorado.

BY THE COURT:

/s/ Sherman G. Finesilver
Sherman G. Finesilver,
Chief Judge
United States District Court